

Cory Spencer, etc., et al. v. Lunada Bay Boys, etc., et al.

Case No. 2:16-cv-02129-SJO-RAO

Exhibit 9

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CORY SPENCER, et al.,

Plaintiff,

vs.

LUNADA BAY BOYS, et al.

Defendants

Case No.: 2:16-cv-02129-SJO (RAOx)

**ORDER TO RELEASE CELL
PHONE**

Hon. Rozella A. Oliver

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

FOR GOOD CAUSE SHOWN, IT IS ORDERED THAT:

The Los Angeles Police Department Release the cell phone of Michael Papayans, which is part of the investigation file DR #15-1100891, evidence item 16, to Meridian Discovery, care of Arman Gungor (hereafter "Meridian"), located at 611 Wilshire Blvd, Ste 315, Los Angeles, CA 90017.

Mr. Papayans shall cooperate as necessary with Meridian with respect to passwords, and shall pay Meridian's costs as well as the costs of production.

Meridian is to forensically extract all available data from Mr. Papayans' phone including, without limitation:

- Call History (including voice mail)
- Text Message History
- Email history
- Photos & Videos
- Contacts & Calendar
- Maps
- Notes
- Web history
- Geolocation (GPS/Cell Tower) data.

The information extracted should include date and time stamps, to the extent available, as well as any other forensic information that can be attributed to each item.

Text Message history should include both SMS and MMS text as well as any other messaging applications found on the phone. Data should include active content as well as deleted but recoverable content. In addition to call activity, server and other connection logs including backup logs should be extracted to the extent available.

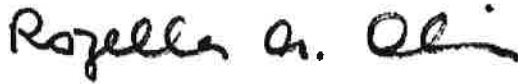
Once preservation is complete, using parameters and instructions agreed upon by the parties and provided to Meridian by Papayans' counsel, Peter Haven, Meridian will perform search and filtering to locate potentially responsive documents in the extracted data. These documents will be provided to Mr. Haven for review.

Upon receipt of the information from Meridian, Mr. Haven and his client shall have 5 days to review the information, assert any appropriate objections and/or any appropriate "CONFIDENTIAL" designation under the Protective Order, and produce non-objectionable data or documents that are responsive to the

1 Request for Production of Documents.

2 Upon completion, Meridian shall return the phone to the Los Angeles Police
3 Department.

4 Date: July 12, 2017

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8 HON. ROZELLA A. OLIVER

9 United States Magistrate Judge
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Cory Spencer, etc., et al. v. Lunada Bay Boys, etc., et al.

Case No. 2:16-cv-02129-SJO-RAO

Exhibit 10

Subject: RE: discovery - cell phone records
From: Victor Otten (vic@ottenlawpc.com)
To: peter@havenlaw.com; kfranklin@hansonbridgett.com; SWolff@hansonbridgett.com;
Cc: kavita@ottenlawpc.com;
Date: Friday, August 4, 2017 2:14 AM

Peter,

The search parameters set forth in the order are:

Meridian is to forensically extract all data from Mr. Papayan's phone as it relates to:

- Call History (including voice mail)
- Text Message History
- Email history
- Photos & Videos
- Contacts & Calendar
- Maps
- Notes
- Safari and Geolocation (GPS/Cell Tower) data as well.

The information extracted should include date and time stamps as well as any other forensic information that can be attributed to each item.

The problem with adding further parameters is the risk of missing something responsive to the RFP. We expect that you can pull out the information responsive to our document request.

In an effort to make your job of reviewing the material prior to production easier here is a list of names:

ADAMS, BO

ANT

ANTHONY BEUKEMA

ARICO, MARK

B MAN

BACON, ROBERT

BARK, JOE

BEATTY, CHAD

BENNETT, BROOKS

BINGMAN

BINGMAN HOME

Brian Whitten

Bruce Vail Rorty

CAMPLIN, JESSE

CAMPLIN, JOHN

CHILES, CHAD

CHRI MOSS

D BOY

DELMONT, RICK

DORYON, ELYAH

DUTSON, JAY

FAIRBROTHER, CHARLIE

FAIRBROTHER, STEVE

FELDY

FERRARA, FRANK

FRIA

GAVIN, TIM

GHALLAGER, COLM

HILTON, DAVID

JESSUP

KAEMERLE, BILL

KIP ROZZI

LAMERS, ERIC M

LEE, SANG

Logan

LOVASZ, GYORGY

LUCAS? (JALIEN RECORDS)

MELO, DAVID

PAPAYANS, MICHAEL(HOME) OR ZIMMERMAN

PAPS

PEREALT, JEAN

ROCCA

SANDOVAL, MATIAS (DENIM)

Skelton, Keenan

SNIPS

STAFFORD, ZACK

STRONG

SULLY, JAMES

SULY, JAMES

THIEL, MICHAEL

VAN DINE, SEAN

WEEKLEY, JAN

(ADRIENNE)

ANDY CROFT

ANORGA, CARLOS

APAYANS, MICHAEL S

BABROS, PETER

BEAUKEMA, CHARLEY

BERNSTEIN, JOSH

BLAKEMAN, BRANT

BLAKEMAN, BRANT(HOME)

BRENDAN

BUCK, JASON

CALDWELL, MATT

CALDWELL, STEPHEN

CAPPER, CHRISTIAN

CHAIRMAN, Dan

CHIMMER

COHEN, IAN

DEMARIA, DEVON

DUTSON, JAY

FERRARA, ANGELO

FERRARA, CHARLEY

FERRARA, CHARLIE

GODSYE, MICHAEL

GOPHER, JEFF

Gray, Alex

HILTON, DAVID

HUGOBOOM, PAUL

JACK BARK

JACK BARK

JESSE CAMPLIN

JOHNSTON, ALAN

KAEMRLE, BILL?

KENT, MIKE

KINION, DOUG

KURT ZIMMERMAN

LEVY, EVAN

LOGAN,

LOSI CELL

MASON, MARSHALL

MEEK, BEN

MILLER, ADAM

PAPAYANS, MICHAEL(HOME)

PAPAYANS, MICHELLE

PATCH, ANDY

RAY WERNER?

RIGGLER

SANDOVAL, NIC

SNELL

STAFFORD, JASON

STEPHEN CALDWELL

STONER, JEFF

STRAETER, FRED

TOPS

Travers, Brad

URCHIN

WHITTEN, BRIAN

Yoakley, David

Here is a list of numbers:

310 755-8947

310 533-7717

310 213-1229

310 947-2918

310 877-6932

310 755-8947

310 293-9621

310 429-2463

310 612-2644

310-291-1726

310 625-1457

310 951-4314

310 540-3812

310 -200-6122

310- 375-0776

310-346-0569

714 240-5102

310 903-2484

310 892-6376

310-421-7590

310 922-0503

213 842-4935

805 534-8825

865 335-1527

310-489-5549

310 613-9593

310 753-1957

310 863-1958

424 241-0846

310 951-2110

310-291-5981

949 295-0111

949 493-3101

310 594-2460

310 985-4537

310 951-0699

808 937-1833

310 544-0737

310 483-5143

310 953-5878

310 980-9561

310 593-1103

310 980-2059

213 447-7607

310 428-7571

310 809-9561

310 -418-6829

310 714-2621

310 647-6080

310 918-1212

310 947-0087

310 722-7879

310-480-3207

310 945-7222

310 251-2329

310 926-3906

310 463-8210

310-371-7763

310 541-5724 P

310 -292-1179

310-386-6790

310-351-8004

424 477-7934

310-377-3917

310 984-0907

310-383-2578

310 541-4588

310-316-1104

310 947-4772

310 408-0609

310 445-3365

310 847-0661

650 339-1711

310 753-5658

805 704-5452

310 947-2760

310 291-7276

310 948-4273

310 405-1817

929 842-7208

310 462-9656

310 291-5981

310-383-2724

310-429-9028

310 429-9028

310 346-0569

310 418-3303

310-377-3887

310 803-7317

760 807-4855

310 991-6703

310 951-9111

310 937-1833

310 467-3362

310 722-3422

310 903-3766

808 268-0547

310 -378-7978

310 792-9319

310-213-1505

310-259-4162

310 567-1767

310 503-3281

310 869-8418

310 874-6726

310 944-5005

310 619-4513

310 863-6442

310 498-2818

808 329-3972

310 704-7393

310 405-1817

310-200-6122

310- 963-6889

Here is a partial list of emails:

ringersurfboards@hotmail.com

roxygwen@charter.net

cmowat@gmail.com

colm31136@earthlink.net

lbcontrolagency@gmail.com

davemelo2002@yahoo.com

yoakswagon@yahoo.com

derek.debraal@sbcglobal.net

ericbinz@cox.net

geoff.dsena@turelk.com

gjelhelkas@wisherservice.com

jayduston@sbcglobal.net

joe@barkocean.com

patchman@socal.rr.com

arthurrozzi@yahoo.com

me.griep@cox.net

mpaps@cox.net

woodyris@yahoo.com

peterb@remed.com

credondobeach@yahoo.com

ssfairob@gmail.com

sullymusic@cox.net

sangdangdoodle@yahoo.com

bruce@turnerbuilt.com

artrozzi@dreambrands.net

fecogle@yahoo.com

mkent@farmersagent.com

4bacons@cox.net

zendelrio@earthlink.net

dj90274@yahoo.com

joe@joebark.com

cstrong@bcws.com

olsusana@aol.com

jcbeukema@charter.net

gwatts67@yahoo.com

michael.dempsey@abc.com

lademan@gmail.com

brianwhitten1965@msn.com

specificprod@earthlink.net

gjahelka@swisherservices.com

croftconstruction@hotmail.com

rwfriedman@yahoo.com

jason.stafford@cox.net

christian.capper@turelk.com

lunadabayhilton@gmail.com

davefisk@rocketmail.com

pvsurf@pvsurfcamp.com

darrylstolz@gmail.com

irwin5haps@cox.net

dbabros@roadrunner.com

ylee64@hotmail.com

artrozzi@dreambrands.net

roxygwen@charter.net

colm31136@earthlink.net

joe@joebark.com

I recall the court stated we can seek discovery going back to 2013 forward.

Again, while I hope that this makes things easier, we expect you to review all the information to determine if it is responsive to our request.

Thanks, Vic

From: Peter Haven [mailto:peter@havenlaw.com]
Sent: Thursday, August 03, 2017 11:47 AM
To: Victor Otten <vic@ottenlawpc.com>; Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>
Cc: Kavita Tekchandani <kavita@ottenlawpc.com>
Subject: Re: discovery - cell phone records

the Stipulation generally provided that Meridian would extract all the data it could.

the next question is what are the search parameters. I recommend that you all give that just a little bit of thought as to the parameters.

in my opinion, the easiest and quickest way to search is by specified Names, Email addresses, and/or Phone Numbers.

that should generate a report as to that information, including text messages.

I believe the reports can be run fairly quickly, and we can do subsequent reports.

but I would prefer not to have multiple waves of reports, if possible.

From: Victor Otten <vic@ottenlawpc.com>
To: Peter Haven <peter@havenlaw.com>; Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>
Cc: Kavita Tekchandani <kavita@ottenlawpc.com>
Sent: Thursday, August 3, 2017 11:24 AM
Subject: RE: discovery - cell phone records

I thought the parameters were in the stipulation? #:14223

From: Peter Haven [mailto:peter@havenlaw.com]

Sent: Thursday, August 03, 2017 10:57 AM

To: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>; Victor Otten <vic@ottenlawpc.com>

Cc: Kavita Tekchandani <kavita@ottenlawpc.com>

Subject: Re: discovery - cell phone records

I believe our Stipulated Order provides as quoted below.

so i believe that the easiest thing is for you to give me some search parameters, and I recommend that they by Names, Email Addresses, and/or Cell Phone Numbers.

Then we can search for responsive data.

"Once preservation is complete, **using parameters and instructions agreed upon by the parties** and provided to Meridian by Papayans' counsel, Peter Haven, Meridian will perform search and filtering to locate potentially responsive documents in the extracted data. These documents will be provided to Mr. Haven for review."

From: Kurt A. Franklin <kfranklin@hansonbridgett.com>

To: Samantha Wolff <SWolff@hansonbridgett.com>; 'Peter Haven' <peter@havenlaw.com>; Victor Otten <vic@ottenlawpc.com>

Cc: Kavita Tekchandani <kavita@ottenlawpc.com>

Sent: Thursday, August 3, 2017 10:18 AM

Subject: RE: discovery - cell phone records

I.e., tonight or tomorrow morning?

From: Samantha Wolff

Sent: Thursday, August 03, 2017 10:18 AM

To: 'Peter Haven'; Victor Otten

Cc: Kurt A. Franklin; Kavita Tekchandani

Subject: RE: discovery - cell phone records

Thanks Peter. Any idea what the turnaround will be like? Any chance we'll get these documents before our opposition is due?

From: Peter Haven [mailto:peter@havenlaw.com]

Sent: Thursday, August 3, 2017 10:07 AM

To: Victor Otten <vic@ottenlawpc.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>; Kavita Tekchandani <kavita@ottenlawpc.com>

Subject: Re: discovery - cell phone records

Meridian has received the phone.

From: Peter Haven <peter@havenlaw.com>

To: Victor Otten <vic@ottenlawpc.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>; Kavita Tekchandani

<kavita@ottenlawpc.com>

Sent: Monday, May 15, 2017 10:35 AM

Subject: Re: discovery - cell phone records

Hi Vic. Yes, we are willing to stipulate to have the phone released to Meridian Discovery
(www.meridiandiscovery.com).

Please send me a proposed Stipulation. Thank you.

From: Victor Otten <vic@ottenlawpc.com>

To: Peter Haven <peter@havenlaw.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>;

Kavita Tekchandani <kavita@ottenlawpc.com>

Sent: Friday, May 12, 2017 4:25 PM

Subject: RE: discovery - cell phone records

Peter,

We appreciate the records but need to resolve the text messages and other information on the phone. As I mentioned below, the police will release the phone to a company we agree on with a court order. Is your client willing to stipulate to that? As we have fast approaching trial date, we cannot wait on this. If your client is not willing to stip, we will set a hearing with the court.

Victor Otten, Esq.

OTTEN LAW, PC

ATTORNEYS

3620 Pacific Coast Hwy #100 | Torrance, California 90505

P (310) 378-8533 | F (310) 347-4225 | E vic@ottenlawpc.com | W www.ottenlawpc.com

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From: Peter Haven [<mailto:peter@havenlaw.com>]

Sent: Friday, May 12, 2017 4:17 PM

To: Victor Otten <vic@ottenlawpc.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>;

Kavita Tekchandani <kavita@ottenlawpc.com>

Subject: Re: discovery - cell phone records

Please see the attached Cell Phone records labeled MP1 to MP83

Thank you

From: Victor Otten <vic@ottenlawpc.com>

To: Peter Haven <peter@havenlaw.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>;

Kavita Tekchandani <kavita@ottenlawpc.com>

Sent: Thursday, May 4, 2017 12:36 PM

Subject: discovery

Peter,

This is in follow-up to our meet and confer on April 17, 2017 regarding your client's responses to plaintiff's request for production of documents pursuant to the Federal Rules of Civil Procedure and the Local Rules of the Central District of California. (See, L.R. 37-1 and Fed. R. Civ. P. 37(a)(2)(A),(B)).

During our meeting, you represented that we would receive further responses to the discovery by the end of April. To date, we have not received any further responses. Please let me know the status on receiving the further responses.

Regarding the issue of your client's phone that was seized by the police shortly before his arrest last year, I meet with the assistant District Attorney who handled the criminal case last week when I was downtown on another case and explained to her that we needed the contents of the phone for a civil case and inquired how that could be arranged. She said that the police can turn the phone over pursuant to a court order. We briefly discussed the logistics involved.

My suggestion is that we stipulate to a court order where the phone is sent directly to Setec Investigations to have the contents copied. Once copied, Setec can arrange to have the phone returned to the police. We can stipulate to the handling of the data and a protective order like what was done with Mr. Carey. If this is acceptable to you, I can draft a stipulation for your review.

I will be in the office this afternoon should you wish to discuss this.
Vic

OTTEN LAW, PC

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Attachments

- image001.png (13.41KB)
- image002.png (13.42KB)

Cory Spencer, etc., et al. v. Lunada Bay Boys, etc., et al.

Case No. 2:16-cv-02129-SJO-RAO

Exhibit 11

Subject: Re: phone records
From: Peter Haven (peter@havenlaw.com)
To: vic@ottenlawpc.com;
Cc: kfranklin@hansonbridgett.com; SWolff@hansonbridgett.com;
Date: Friday, August 11, 2017 3:32 PM

Hi Vic. I have been working on this issue, but I am not sure what more I can do. I do not believe that we can seek documents from third parties, such as the DA, after the discovery cutoff. Meridian has suggested sending the phone to a third-party service provider which apparently, I was just advised, is back East and would have the phone for several weeks. I am concerned about that because the stipulated order says that the phone is released to Meridian and Meridian is to return it to the LAPD. It does not provide for release to third parties, much less to an out-of-state third party that would have the phone that long.

I do not know the service used on Johnston's phone, and I do not know if his phone was an Apple or, as in this case, a Samsung. Moreover, there are the problems with the custody issues I referred to above.

As for his phone history, when we met at your office, we discussed three phones. The one the LAPD had taken in or about Feb. 2016, the current one he has now, and the one he had in between that he lost in Jan. 2017. That was why the extraction report we produced only went from Jan. 2017 through the date of production, which was one of the issues raised in your meet-confer letter. In speaking with him recently, I asked about how long he had the LAPD phone before it was taken, and he indicated that he had another phone the year before. Hence my reference to four phones.

We also produced all of his cell phone bills from Oct 2015 to May 2016.

I really am not sure what I can do at this point.

From: Victor Otten <vic@ottenlawpc.com>
To: Peter Haven <peter@havenlaw.com>
Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>
Sent: Thursday, August 10, 2017 10:44 PM
Subject: RE: phone records

Peter,
When we first meet and conferred on why the phone records that Michael turned over did not include texts from the years prior to 2017, you never mentioned him having four different phones. Your explanation was that the police seized the phone.

Having prosecuted criminal cases for the City of Torrance years ago and worked on numerous criminal cases, I find it hard to imagine that a prosecutor would not have turned over phone records obtained via search warrant. I am not questioning what you tell me but will reach out to the prosecutor and asked about any records that they have and if they were turned over in discovery. Obviously there is some confusion.

It is my understanding that there is a court hearing on the criminal case on August 16, 2016. Maybe you and I should talk to the DA at that time? If we are both there, we can stipulate to get any records the DA might have (assuming the DA agrees). The judge in the criminal court would certainly have jurisdiction to order the release of the records.

Regarding the phone, the vendor who handled Alan Johnston's phone had no trouble getting the information without a password. Maybe we can send it there.

I know that you are trying to get this resolved but it should not be this difficult. I am also concerned that Meridian refused to respond to my email.

Victor Otten, Esq.

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Please consider the environment before printing this e-mail message.

From: Peter Haven [mailto:peter@havenlaw.com]

Sent: Thursday, August 10, 2017 3:58 PM

To: Victor Otten <vic@ottenlawpc.com>

Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>

Subject: Re: phone records

Hi Vic and Everyone.

We have been trying to access the phone, but have been unable.

Michael has cooperated and supplied pin codes, but they have not worked, and the phone did not open in response to his thumb.

In fairness to Micheal, he appears to have had about four cell phones in the past several years.

Your comment below is interesting, in that it appears the DA or someone did access the phone when it was in their custody.

I called his criminal defense attorney, and he said he did not receive an extraction report.

Meridian reports that it cannot open the phone.

I am considering whether to send the phone to an outside vendor to try to open it, which could take weeks.

I do not know if our stipulated order provides for that, and so I would be grateful for your thoughts on that issue.

I am also mindful of the Magistrate's ruling yesterday regarding the Discovery Cut Off.

I would be grateful for your thoughts as to how that ruling impacts this issue.

Thank you.

From: Victor Otten <vic@ottenlawpc.com>
To: Peter Haven <peter@havenlaw.com>
Cc: Kurt A. Franklin <kfranklin@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>
Sent: Wednesday, August 9, 2017 11:49 PM
Subject: phone records

Peter,

This is in follow-up to my email yesterday which you failed to respond. As you know, we were forced to oppose your client's Motion for Summary Judgement without critical discovery which was easily accessible to you months ago.

As I mentioned in my email yesterday, it is my understanding that the District Attorney's Office turned over a phone extraction report of Mr. Papayans phone over a year ago as part of discovery in the criminal case. You could have obtained that report either from the attorney that represented your client in the criminal case or by simply calling the District Attorney. Moreover, your client knew about that report. Yet, that was not reflected in his discovery responses.

Regarding the phone, your client has the password.

When are you going to provide us the information?

Vic

OTTEN LAW, PC

ATTORNEYS

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Please consider the environment before printing this e-mail message.

Attachments

- image002.png (13.41KB)
- image003.png (13.42KB)